

RESOLUTION 07-2008

February, 2008

RESOLUTION ADOPTING (REVISED) CRITERIA FOR LOCAL DETERMINATION OF EVASION OF THE SUBDIVISION AND PLATTING ACT AND SUBDIVISION AND SANITATION ACT

WHEREAS, the criteria for Local Determination of Evasion of the Subdivision and Platting Act and the Subdivision and Sanitation Act, in the Jefferson County Subdivision Regulations adopted January 9, 2002 and amended last in 2006, is in need of revision because of legislative changes to the Act, recent Attorney General Opinions and court decisions pertaining to the Act, and

WHEREAS, the Legislature, in adopting and amending the Subdivision and Platting Act, §76-3-101 et. seq., has presumed: (1) that parcels of land containing less than 160 acres are building sites and that the creation of these parcels should be reviewed and approved by the local governing body applying the primary review criteria set forth in § 76-3-608, MCA; (2) that the exemptions from subdivision review under §76-3-201, and § 76-3-207, MCA are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites or creates so few building sites that only minimal impact will likely result and (3) that the purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review but rather to deal with the exceptional circumstance when subdivision review is unnecessary; and

WHEREAS, the Montana Supreme Court decisions in Florence-Carlton School District v. Ravalli County Board of Commissioners; Leach v. Visser; and State ex rel. Dreher v. Fuller; has recognized a county's right to **narrowly interpret and enforce** the provisions of the Montana Subdivision and Platting Act, especially those pertaining to the use of exemptions; and

WHEREAS, the parcels of land created by exemptions often do not provide for: (1) the coordination of roads within the divided land or with other roads, both existing and planned; (2) the dedication of land for roadways and public utility easements; (3) the provision of adequate open spaces, for travel, light, air and recreation; (4) the provisions of adequate transportation, water drainage, and sanitary facilities; (5) the avoidance or minimizing of congestion; (6) the avoidance of land division that would involve unnecessary environmental degradation; and (7) the avoidance of danger or injury to health, safety or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, schools or other public services, or would necessitate an excessive expenditure of public funds for the supply of such service; and

WHEREAS, the likelihood that land development problems will occur is greatly increased when building sites are created without public review and further divided without review; and

WHEREAS, the Jefferson County Board of Commissioners has established the necessary procedures for expedient review of subdivisions creating five or fewer parcels, and

thus, has diminished the justification for avoiding review through use of exemptions.

NOW THEREFORE, BE IT RESOLVED, that Jefferson County adopts the following criteria that shall supersede those adopted by Jefferson County in 2006 per Resolution 33-2006, and the criteria shall guide the Jefferson County Survey Committee and the Jefferson County Commissioners in determining when the use of an exemption from subdivision review is adopted to evade the purpose of the Montana Subdivision and Platting Act:

I. PROCEDURES AND GENERAL REQUIREMENTS

1. **All Certificates of Survey submitted to the Survey Committee under this part shall be subject to Examining Surveyor review. The registered owners of the property will be required to pay review fees when initially submitted. The base Examining Surveyor fee is \$65.00 per review. The Examining Surveyor fee may exceed \$65.00 dependent upon the Examining Surveyor's charges. The Survey Review Committee fee is \$140.00 for the initial review and \$25.00 per additional review on amendments. Retracement Surveys shall be charged examining surveyor fees only.**

2. Any person seeking exemption from the requirements of the Subdivision and Platting Act, §76-3-101 et seq., MCA, (the Act), and the Subdivision and Sanitation Act §76-4-101 et seq., MCA, (the Sanitation Act) shall submit to the Jefferson County Clerk and Recorder (1) a certificate of survey or where a survey is not required an instrument of conveyance, and (2) evidence of, and an affidavit affirming entitlement to the claimed exemption.

3. When a certificate of survey or instrument of conveyance is submitted to the Clerk and Recorder, the Clerk and Recorder shall cause the documents to be reviewed by the Jefferson County Survey Committee which may include a Jefferson County Commissioner, the Jefferson County Clerk and Recorder, the County Attorney, County Planner, and/or Sanitarian. The Survey Committee shall meet weekly to review proposed land divisions to determine whether they comply with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act and the Montana Sanitation in Subdivisions Act.

4. If the Survey Committee finds that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the proposed use of the exemption does not comply with the statutes and these criteria, the committee shall advise the Clerk and Recorder not to file or record the documents, and the clerk shall return the materials, with corrections or written reasons for denial to the landowner or his agent. If there is a questions of whether an exemption is claimed for the purpose of evading review under the Subdivision Act or Sanitation Act, the Survey Committee may require the person claiming the exemption to furnish evidence of entitlement to the exemption. State ex rel. Dreher v. Fuller, 1993.

5. Any person whose proposed use of exemption has been denied by the Survey

Committee may appeal this decision to the Jefferson County Board of Commissioners. The person must request a hearing before the Board and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act. After such hearing, the Board shall issue a written order affirming or reversing the Survey Committee's decision. Such order shall set forth the evidence presented at the hearing and the reasons or basis for the Board's decision.

6. If the use of an exemption is determined to be an evasion of the Act, the landowner may submit a subdivision application for the proposed land division.

7. To assist in the implementation of this review process and to monitor those parcels by exemption, the Clerk and Recorder shall cause the following letter system to be added to the numbering of recorded certificates of survey filed after the effective date of this resolution:

FC - Family Conveyance, §76-3-207(1)(b), MCA.

CM - Construction Mortgage, §76-3-201(2), MCA.

BR - Boundary Relocation, §76-3-207(1)(a), MCA.

AG - Agricultural Exemption §76-3-207(1), MCA.

II. GENERAL REVIEW CRITERIA

1. The County Commission and its agents, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include, but are not limited to; the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review. State ex rel. Dreher v. Fuller, 1993.

2. Those definitions as set forth in §76-3-101 et seq., MCA, and §76-4-101 et seq., MCA, are hereby adopted as definitions for these exemption review criteria.

3. All certificates of survey filed under an exemption must include complete boundary descriptions for each parcel that has been amended or created.

4. A Rural Improvement Districts (RSID) lien is a taxable lien upon a parcel of real property. When filing a survey, all taxes, including RSID liens, must be paid in full on affected real property.

III. EXEMPTION REVIEW CRITERIA

A. EXEMPTION AS GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY - §76-3-207(1)(b), MCA.

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property unless the conveyance is within the boundary of a platted subdivision.
2. The Attorney General has defined "immediate family" as the spouse, children or parents of the grantor.
3. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship of the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance. The certificate of survey shall be accompanied by an affidavit of exemption eligibility and deed. (See attached Exhibit "A").
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this Resolution. However, parcels less than twenty (20) acres must comply with sanitary restrictions under Department of Environmental Quality.
5. A certificate of survey for a family conveyance must also include deeds of conveyance to family members for filing along with necessary filing fees.
6. Family conveyances in a platted subdivision are not allowed.

B. EXEMPTION TO PROVIDE SECURITY FOR A CONSTRUCTION MORTGAGE, LIEN OR TRUST INDENTURE - §76-3-201(2), MCA.

1. Statement of Intent: Lending institutions and federal home loan guaranty programs often require landowners that are buying a tract with financing or through a contract for deed to hold title to the specific site on which the home, structure or improvements will be built. The intended purpose of this exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.

For the purposes of this part, Construction of a home includes locating or installing a Class A Manufactured Home on a permanent foundation with permanent utility connections.

2. *This exemption does not create a parcel until said mortgage, lien or trust indenture secured by the parcel is foreclosed under the provisions established by the lending agency in compliance with Montana State law.* This provision is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance or

refinance construction of a home, structure or improvements on the proposed lot. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and does not yet hold title), and (2) a lending institution requires the landowner to hold title to a smaller parcel of the tract because the smaller tract is required as security for a building construction loan.

3. When this exemption is to be used, the landowner shall submit to the Clerk and Recorder:

- a. A signed statement from a lending institution that the creation of the exempted parcel is necessary to secure financing or refinancing for buildings or other improvements on the parcel; and
- b. A survey of the original parcel, with *a dashed line describing* the boundaries of the tract of land to be used for providing security:

4. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- a. It will create more than one building site from the original tract less than 160 acres;
- b. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs;

C. EXEMPTION FOR AGRICULTURAL PURPOSE - §76-3-207©), MCA.

1. STATEMENT OF INTENT: The intent of this exemption is to allow the landowner to create a parcel without local review where the parcel will be used exclusively for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.

2. "Agricultural Purpose" for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the Department of Environmental Quality (DEQ), provided the applicable exemption is properly invoked by the property owner.

3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for purposes of evading the Act:

- a. The parties to the transaction must enter into a covenant running with the land

and revocable only by mutual consent of the county commissioners and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the county commissioners; (See attached Exhibit "B").

b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built requiring sewer or water facility. (eg. a statement signed by the buyer).

c. Any change in use of the land for anything other than agricultural proposes subjects the parcel to review as a minor subdivision.

d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked.

D. RELOCATION OF COMMON BOUNDARY - §76-3-207(a), MCA.

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a transfer of a tract to effect that change in location without subdivision review.

2. Certificates of survey claiming this exemption must include a legal description of both newly created parcels and clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line.

3. Deeds for the relocation of boundaries shall be required when filing the certificates of survey.

4. If the relocation of a common boundary would result in the creation of an additional tract of land, the division of land must be reviewed as a subdivision.

5. The certificate of survey must contain the signatures of all record owners of the parcels involved, and be submitted with Department of Environmental Quality approval and deeds describing the newly created parcels.

E. REMAINDERS:

1. Statement of Intent: A "remainder" parcel is that part of an original tract that is left following the segregation of other parcels from the tract. A remainder that is created by the segregation of a subdivision from a larger tract is not part of the subdivision, nor is it subject to the survey requirements in the ACT.

2. Remainders less than twenty (20) acres are subject to Department of Environmental Quality sanitary restrictions.

3. All remainders less than 160 acres must be included in the certificate of survey along with a boundary description.

F. EXEMPTIONS FROM SANITARY REVIEW:

1. Certificates of Survey claiming exemption from sanitary review under 17.36.605(2)(a), ARM must clearly denote on the **parcel and the Certificate of Survey** claiming the exemption that the parcel is subject to sanitary restrictions. Such surveys must be submitted with an affidavit of eligibility setting forth the applicant's eligibility to claim said exemption. (See attached Exhibit "C").

2. Certificates of Survey claiming exemption from Sanitary Review under §76-4-125(2)(e)(ii), MCA, must be submitted with documentation establishing the construction date of the current system.

DATED this 19th day of February, 2008.

**BOARD OF COUNTY COMMISSIONERS
OF JEFFERSON COUNTY, MONTANA**

KEN WEBER
Chairman

CHUCK D. NOTBOHM
Commissioner

TOMAS E. LYTHGOE
Commissioner

ATTEST: _____
Bonnie Ramey
Jefferson County Clerk &
Recorder

(Seal)

EXHIBIT "A" - RESOLUTION 07-2008

STATE OF MONTANA)

County of Jefferson) : ss. **AFFIDAVIT**

COMES NOW, _____, and being first duly sworn, deposes and upon his\her oath answers the following:

1. Who is the owner of record of this property?

_____. If you are not the owner, please describe your relationship to the contract holder or entity owning the property.

_____.

2. Have you made prior subdivision exemption claims on any property in Jefferson County? _____.

3. Is your primary residence located on this parcel?

4. Do you own more than one parcel in Jefferson County?

5. Why are you proposing this division of land?

6. What is the history of this tract?

7. How long have you owned or had an interest in it?

8. Other than the intended disposition set forth in your application on file with the Survey Committee, is there any type of agreement, oral or written, regarding the creation, sale or development of the tracts involved in this division of land?

9. Do you agree that you and your immediate family recipients will not sell or transfer any of the tracts created under the Family transfer exemption for a period of one (1) year, unless you or the recipient files for subdivision review or provides the Survey Committee with evidence that the sale is not intended to evade the Act?

10. Is the remainder parcel included in survey?

11. If not, what is the approximate acreage of the remainder?

12. Do topography or other existing features impede proper subdivision?

13. Would any of the parcels be "landlocked" without appropriate road access?

14. Would the proposed division have negative effects on nearby roads?

WITHIN THE LAST THREE (3) YEARS:

15. Was the parcel created or affected by a previous exemption?

16. Have you, a recent owner, or your intended grantee expressed an interest in subdividing the parcel?

17. Has a subdivision proposal for the parcel been withdrawn or denied?

18. Have any persons other than your immediate family members expressed an interest in purchasing or developing any of the tracts involved in this division of land?

19. Have you, or your immediate family members, had any discussion with a person interested in purchasing a portion of your land?

LANDOWNER

SUBSCRIBED AND SWORN TO before this _____ day of _____,

_____.

(NOTARIAL SEAL)

Notary Public, State of Montana

Residing at:

My Commission expires:

EXHIBIT "B" - RESOLUTION 07-2008

DECLARATION OF AGRICULTURAL COVENANT

THIS DECLARATION, made by and between _____

_____, (owners) and _____

(buyers) of a parcel more particularly described as follows:

Montana, and the Jefferson County Board of Commissioners;

THAT, WHEREAS, the parties intend to create a parcel to be used exclusively for
production of livestock or agricultural crops more particularly described on Certificate of Survey
No. _____ Folio No. _____ on file and of record in the Office of the Clerk and
Recorder of Jefferson County, Montana, and wish to impose by means of this Covenant certain
restrictions upon the future uses of said property;

NOW, THEREFORE, the parties declare that the parcel(s) described above, contain(s)
less than one hundred sixty (160) acres, shall be held, used, sold and conveyed in any manner
subject to this covenant, which shall run with the land and real property and shall be binding on
all parties having any right, title or interest in the property or properties subject to this Covenant,

or in any part thereof, shall be binding upon their heirs, executors, successors, administrators and assigns, and shall bind each and every owner thereof, now and in the future.

The parties further declare that this Covenant may be revoked only by mutual consent of the property owner and the Board of County Commissioners of Jefferson County, Montana, as the governing body of said County, in which case a decision to revoke shall be solely that of the governing body; further, Declarant declare that said governing body is deemed to be a party to, and may enforce, this Covenant, to-wit:

The parcel(s) shown as "agricultural" on the said Certificate of Survey No. _____, Folio No. _____, and containing less than one hundred sixty (160) acres, shall be used exclusively for agricultural purposes, and no building or structure requiring water or sewage facilities, except for livestock watering, will be erected or utilized thereon.

Further, any change in use of the said parcel(s), land and real property (properties), which is/are subject to this Covenant, for anything other than agricultural purposes, shall subject the parcel(s) to enforcement of this Covenant and/or subjects the parcel(s) to review as a minor subdivision. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses created under this exemption and under the covenant.

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EXHIBIT "C" - RESOLUTION 07-2008

AFFIDAVIT

_____, and being first duly sworn, deposes and upon his\her oath answers the following:

1. I am the registered owner of the tract of land set forth in the accompanying Certificate of Survey #_____;
2. If you are not the owner, please describe your relationship to the contract holder or entity owning the property. _____;
3. The parcels subject to this survey are exempt from sanitary review by the State Department of Environmental Quality because none of the parcels being created by this Certificate of Survey are parcels where sanitation facilities will be used and no structure requiring water or sewage disposal will be erected upon these parcels.

LANDOWNER

SUBSCRIBED AND SWORN TO before this _____ day of _____, _____.

Notary Public, State of Montana
Residing at:
My Commission expires: